

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT IN AND
FOR DUVAL COUNTY, FLORIDA

Case No.

16- 2011-CA-002567

-XXXX-MA

A.D. and S.T., Individually and on behalf
of their adopted children, W.D. and J.D.;

Plaintiffs,

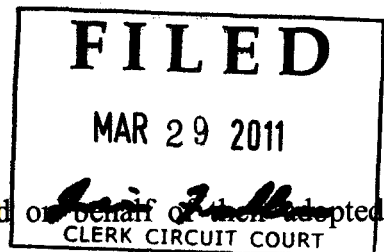
vs.

FAMILY SUPPORT SERVICES OF NORTH
FLORIDA;

Defendant.



DIVISION CV-D



COMPLAINT

COME NOW Plaintiffs, A.D. and S.T., individually and on behalf of their adopted children, W.D. and J.D., by and through undersigned counsel, and hereby sue the Defendant, FAMILY SUPPORT SERVICES OF NORTH FLORIDA, and state as follows:

JURISDICTION AND VENUE

1. This is a claim for negligence for actions which took place in Duval County, Florida and Nassau, County, Florida.
2. This action involves damages in excess of Fifteen Thousand Dollars (\$15,000.00) exclusive of attorney's fees, interests, or costs.

PARTIES

3. Plaintiffs, A.D. and S.T., are sui juris adults who adopted children through the State of Florida child welfare court system.
4. Plaintiff, J.D. (hereinafter "J.D."), whose date of birth is November 12, 2002, is a minor child.
5. Plaintiff, W.D. (hereinafter "W.D."), whose date of birth is August 13, 2004, is a minor child.

6. Plaintiffs, J.D. and W.D. were legally dependent children pursuant to Chapter 39, Florida Statutes, and in the legal and physical custody of the Department of Children and Families (hereinafter "DCF").
7. In or around August 2009, Plaintiffs, A.D. and S.T., legally adopted Plaintiffs, J.D. and W.D. pursuant to a final judgment of Adoption entered by the Circuit Court, in and for the Fourth Judicial Circuit.
8. Due to J.D. and W.D.'s status as minor children, they are filing this action through their next friends and adoptive parents, A.D. and S.T.
9. Defendant, FAMILY SUPPORT SERVICES OF NORTH FLORIDA (hereinafter "FSSNF") is organized and existing under the laws of the State of Florida, doing business in Duval County and Nassau County.
10. At all times relevant hereto, FSSNF was the lead community based provider in Duval County and Nassau County, which contract with the Florida Department of Children & Family Services ("DCF") pursuant to § 409.1671, Florida Statutes, to provide foster care, adoption and related services to dependent children in the legal custody of DCF pursuant to the terms of a contract between FSSNF and DCF.
11. DCF is the state agency charged with operating the state foster care and adoption system and providing substitute care services to children placed in its care.

GENERAL ALLEGATIONS

12. On or about February 16, 2005, Plaintiffs, J.D. and W.D., were removed from their biological mother because of her inability to provide stable housing and care for the children.

13. On or about March 24, 2005, the Defendant FSSNF, which was responsible for the health, welfare, and safety of the children, placed the children in the foster home of Annette Smith, where they remained for approximately nineteen (19) months and where they were severely and repeatedly physically, sexually, and emotionally neglected and abused by their foster mother as follows:

- a. J.D. and W.D. were beaten, denied food, defecated upon, made to eat feces, sodomized, and forced to participate in sexual acts;
- b. J.D. and W.D. were fed soap, chalk, feces, and made to drink urine;
- c. J.D. and W.D. were not permitted to use the bathroom or wear clothing;
- d. J.D. and W.D. were not permitted to drink water and would sneak and drink out of the pool, and if they were caught, they would be beaten;
- e. J.D. and W.D. were given a doughnut with feces, and told that it was a chocolate doughnut;
- f. J.D. and W.D. were fed rotten food;
- g. J.D. and W.D. were told to lay on the floor and open their mouth while Ms. Smith defecated directly into their mouth;
- h. Ms. [REDACTED] urinated on their bodies;
- I. J.D. and W.D. were given candy canes soaked in urine;
- j. J.D. and W.D. were poked in the eyes;
- k. [REDACTED] bit their cheeks and buttocks;
- l. [REDACTED] stuck rotten fish and chicken bones in their private parts;
- m. [REDACTED] shoved forks, knives, and pencils in their private parts;

- n. J.D. and W.D. were forced to dress up in opposite sex clothing and perform marriage ceremonies where they had to kiss the bride; and
 - o. J.D. and W.D. were forced to pretend to be in a same sex marriage ceremony with other children where they were forced to kiss;
14. On or about May 23, 2006, the parental rights of the children's biological parents were terminated.
15. On or about October 6, 2006 J.D. and W.D. were removed from the home of [REDACTED] S [REDACTED] upon allegations of abuse of the children and/or other foster children residing in the [REDACTED] foster home, and placed in the foster home of C [REDACTED] where they remained for approximately six months.
16. Once again the safety and well being of the children in this second foster home was in question as the Guardian Ad Litem witnessed foster parent, [REDACTED] spraying W.D. with a kitchen sink hose.
17. On or about April 10, 2008, J.D. and W.D. were transported to a prospective adoptive home of M [REDACTED] in Virginia.
18. Despite this constant change in placements, DEFENDANT failed to ensure that the children received services to address their constant placement disruptions.
19. J.D. and W.D. remained with this prospective adoptive family for approximately five months until September 6, 2008; however, they were not adopted because the prospective adoptive father returned from active duty in Iraq and suffered from post traumatic stress disorder.

20. Once again, the DEFENDANT failed to ensure that the children received the necessary services and therapy to address their removal from their mother, to address this third placement disruption, and to now address a failed adoption.
21. Instead, the children were told that they were returning to Florida for a visit only and upon their arrival, the prospective adoptive parents said goodbye and never returned.
22. On or about September 6, 2008, DEFENDANT placed J.D. and W.D. in a fourth foster home in Callahan, Florida where they remained for only three months.
23. On or about December 15th, 2008, DEFENDANT again failed to ensure the safety of the children while they were in foster care and an investigation revealed that J.D. and W.D. were being physically abused.
24. As a result of the investigation, DEFENDANT placed the children, who were now ages four and six, in a fifth foster home in Callahan, Florida.
25. DEFENDANT failed to ensure that the children reached permanency within the federal and state requirement to achieve permanency within twelve months, and almost four years after their removal and two years after their parents' rights had been terminated, these children remained in foster care as wards of the state and repeatedly experienced physical, sexual, and emotional abuse.
26. DEFENDANT failed to ensure the health and well-being of the children as they bounced them from one home to the next at a time of their childhood which was crucial in their social, physical, and emotional development and critical in developing their ability to establish healthy attachments.

27. On or about January 2009, A.D. and S.T. expressed an interest in adopting J.D. and W.D. who they saw on an adoption registry and indicated that they will consider two or three siblings, under the age of five and as healthy as possible.
28. The adoption home study of A.D. and S.T. was clear that the parents were not equipped to take on kids with anything more than mild emotional issues.
29. Reports provided by FSSNF to A.D. and S.T. gave no indications of the children's past trauma.
30. Reports regarding W.D. stated the following:
- a. On or about November 21, 2008, the Comprehensive Assessment of W.D. indicated that he was socially and behaviorally delayed; however, there were no reports of the abuse he experienced while in care.
 - b. On or about December 18, 2008, W.D.'s Child Study reports no concerns except a diagnosis of unspecified adjustment disorder, R/O ADHD. Counseling was not recommended except to address multiple failed placements.
31. Reports regarding J.D. stated the following:
- a. On or about November 21, 2008, the Comprehensive Assessment of J.D. indicated no recommendation for counseling, and revealed no information pertaining to the abuse sustained while in foster care.
 - b. On or about December 18, 2008, J.D.'s Child Study reports no concerns for therapy except to address multiple failed placements.
32. At the time of the adoption, DEFENDANT knew the following information and failed to inform Plaintiffs:

- a. [REDACTED] home was closed because of allegations of physical abuse (which was in complete contradiction of DEFENDANT's assertion to the Plaintiffs that the home was closed for unknown reasons);
- b. An investigation was initiated on the home of [REDACTED] because J.D. suffered a black eye, another child in the home was punched in the nose and suffered a nose bleed, and the children were seen with bruises;
- c. [REDACTED] beat the children in the home with a belt;
- d. [REDACTED] did not adequately feed the children;
- e. [REDACTED] did not provide adequate medical care;
- f. The children were seen to be dirty during the investigation of the foster home of [REDACTED];
- g. For some time, the children were not visible to the public while they were in the home of [REDACTED] because they were not enrolled in daycare pursuant to the requirements of the Rilya Wilson Act;
- h. DEFENDANT licensed the home of [REDACTED] despite two prior DUI arrests.

33. DEFENDANT also knew and failed to disclose that:

- a. W.D. had the tendency to be aggressive even when unprovoked;
- b. W.D. had the tendency to have temper tantrums;
- c. W.D. reverted back to wetting himself shortly after leaving a foster home in Callahan, Florida where he was physically abused;
- d. W.D.'s behavior was described as erratic;
- e. W.D.'s speech was very difficult to understand;
- f. W.D. needed constant redirection;

- g. W.D. had difficulty making eye contact;
- h. J.D. reverted back to baby talk shortly after leaving the home of [REDACTED]
[REDACTED]
- i. J.D. was being tested for possible hearing deficiencies;
- j. J.D. had sickle cell anemia;
- k. J.D. and W.D. had experienced multiple placements because of the inability of foster parents to cope with their special needs;

34. DEFENDANTS were advised on multiple occasions that the children required extensive services.

35. In February and April 2009, A.D. and S.T. had pre-adoption visits with J.D. and W.D.

36. On or about April 30, 2009, J.D. and W.D. were transported to the prospective adoptive home of A.D. and S.T., in Victoria, British Columbia.

37. Approximately August 2009, J.D. and W.D. were officially adopted through the Florida court system.

38. Throughout the time the children were in the legal and physical custody of Florida, the DEFENDANT was negligent and failed to investigate and report incidents of abuse which resulted in the children's lifelong injuries and an ultimate adoption to parents who were not prepared to raise children with such extensive special needs, including treatment to address extreme emotional, physical, psychological, and sexual abuse.

39. Since Plaintiffs adopted J.D. and W.D., the children have exhibited numerous concerning behaviors and/or health and safety concerns including:

- a. W.D. had discharge coming from his penis when he was first brought to the home of A.D. and S.T.;

- b. W.D. has angry outbursts such as throwing books at the nanny and punching her in the face;
 - c. W.D. has inappropriately touched J.D. and is constantly in need of guidance as to physical boundaries;
 - d. W.D. has gender identity problems in that he did not know whether he was a boy or a girl;
 - e. J.D. continues to have nightmares about monsters whom she reports are [REDACTED].
[REDACTED];
 - f. J.D. constantly expresses a desire to kill her adoptive mother and her brother and chop them up into pieces;
 - g. J.D. defecates on her hands and smears it on her adoptive mother;
 - h. Both J.D. and W.D. suffer with serious psychological and psychiatric needs requiring a lifetime of extensive treatment.
40. A March 8, 2010 evaluation of W.D. revealed that W.D.:
- a. Frequently tried to touch family members inappropriately;
 - b. Tries to grab other people's genitalia and women's breasts frequently when he is upset;
 - c. Has tried to touch the family dog's genitalia;
 - d. Has exposed himself to his sister;
 - e. Is confused about his gender identity;
 - f. Is disruptive at school;
 - g. "WD is a bright and engaged boy who appears to have experienced significant degree of trauma in his young life. This trauma has not been

limited to the physical and sexual abuse he has allegedly experienced, but also to his multiple foster placements and lack of consistent and caring environment prior to coming to live with § [REDACTED]

41. This adoption has turned into a nightmare for this family in that the children require around the clock supervision and extensive services to ensure their health and safety due to the following:

- a. The children are unable to attend a regular daycare and must have a specially trained nanny;
- b. The children are unable to remain in a school setting for an entire day, and must instead be home schooled for the other half of each day;
- c. W.D. is in need of therapy including music therapy, occupational therapy, and related forms of intervention;
- d. W.D. requires a smaller school setting and will need one on one support in the classroom;
- e. J.D. suffers from severe pain when using the bathroom;
- f. J.D.'s psychiatric condition has required hospitalization.

42. Despite requests for financial assistance to address the extensive needs of these children, the DEFENDANT has failed to ensure that Plaintiffs receive adequate financial assistance to stabilize this adoptive home.

43. Instead A.D. and S.T. have been forced to take extensive time off from work and S.T. has been forced to take a demotion so that she can adequately care for the children.

44. The family is unable to have a stable nanny to assist with the children because of their extreme behavioral difficulties and extensive psychiatric needs.
45. In addition, A.D. and S.T. are in need of counseling.

**COUNT I- NEGLIGENCE OF FAMILY SUPPORT SERVICES OF NORTH
FLORIDA**

46. Plaintiffs hereby reaver and reallege the above general allegations as if fully set forth herein.
47. At all times material hereto, FSSNF had a duty to provide reasonable care and supervision in a reasonably safe and secure setting to J.D. and W.D., including, but not limited to provide:
- a. Reasonable and safe placement;
 - b. Reasonable supervision;
 - c. Reasonable protection;
 - d. Reasonable and adequate care and services, including but not limited to psychiatric and psychological care;
 - e. Reasonable and safe continuity of care, therapy, and case monitoring;
 - f. Comply with the provisions of the Florida Statutes and the Florida Administrative Code, including, but not limited to: §§ 63.039, 63.085, and 63.125, Florida Statutes, and Rules 65C-13.015, 65C-15.028, 65C-15.029, 65C-15.031, 65C-16.002, 65C-16.009, 65C-16.010, and 65C-16.013, Florida Administrative Code; and
 - g. All other protections provided by Florida law to children.

48. At all times material hereto, FSSNF breached its duty and failed to provide reasonable care, protection, supervision, and treatment to said children in that FSSNF failed:

- a. To provide adequate protective and support services to J.D. and W.D.;
- b. To provide J.D. and W.D. with reasonably adequate foster care and related services free from physical, sexual, and emotional abuse, which legally caused and/or substantially contributed to the serious psychological and psychiatric needs requiring a lifetime of extensive treatment.
- c. To comply with § 63.039, Florida Statutes, by failing to adequately investigate the history of the children and assess them to provide an accurate description of the history of the children to promote the well-being of J.D. and W.D. and their prospective adoptive parents, to ensure certainty, finality, permanency, and an appropriate placement that would meet their special needs;
- d. To comply with the provisions of § 63.085, Florida Statutes by failing to complete an appropriate home study that contained the specific findings that J.D. and W.D.'s prospective adoptive parents were able to meet the children's special needs, including mental health needs and behavioral issues;
- e. To comply with the provisions of § 63.125, Florida Statutes by failing to complete a full and complete investigation of J.D. and W.D.'s background to ensure that, given their background and history, the adoptive parents would be able to meet their special needs, including their mental health needs and behavioral issues;
- f. To comply with the provisions of Rule 65C-15.028 of the Florida Administrative Code by failing to complete a full and complete investigation of J.D. and W.D.'s

background to ensure that an appropriate match and placement selection of prospective adoptive parents was made which would ensure that the children's special needs are met;

- g. To comply with provisions of Rules 65C-15.029 and 65C-16.002 of the Florida Administrative Code by failing to fully investigate and inquire as to the children's history such that the Child Studies conducted included all pertinent and critical information to ensure that the prospective adoptive parents would be able to meet J.D. and W.D.'s special needs.

49. As a result of FSSNF's negligence and other unreasonable conduct, J.D. and W.D. have sustained damages, including but not limited to bodily injury and resulting pain and suffering, mental anguish, loss of capacity for the enjoyment of life, expenses of therapeutic and psychiatric treatment, aggravation of previously existing condition, and unnecessary, inappropriate delays in treating pre-existing conditions, thereby compounding the situation in depriving J.D. and W.D.'s need of therapy and ongoing support services. The losses are permanent and will continue in the future.

50. Furthermore, as a result of FSSNF's negligence and other unreasonable conduct, the adoptive parents, A.D. and S.T., have incurred extraordinary expenses and provided gratuitous care and services to J.D. and W.D., all of which are compensable.

WHEREFORE, Plaintiffs demand judgment for damages against the Defendant, FAMILY SUPPORT SERVICES OF NORTH FLORIDA, for compensatory damages, costs, and all other such relief as the Court may deem just and proper.

**COUNT II- WRONGFUL ADOPTION BASED ON NEGLIGENT
MISREPRESENTATIONS AND CONCEALMENT BY FAMILY SUPPORT SERVICES
OF NORTH FLORIDA**

51. Plaintiffs hereby reaver and reallege the above general allegations as if fully set forth herein.

52. At all times material hereto, FSSNF had a duty to fully and completely disclose and fully investigate the history of the children to ensure disclosure of all information and records it had concerning J.D. and W.D., including psychosocial history, behavioral status and predictors, psychiatric and mental health history, and to comply with all the provisions of the Florida Statutes and the Florida Administrative Code, including, but not limited to: §§ 63.039, 63.085, and 63.125, Florida Statutes, and Rules 65C-15.028, 65C-15.029, 65C-15.031, 65C-16.002, 65C-16.009, 65C-16.013, Florida Administrative Code, so that the suitability for adoption could be reasonably considered on a fully informed basis by the adoptive parents, A.D. and S.T..

53. Instead, during the pre-adoption period, FSSNF misrepresented, concealed, or failed to fully investigate, the material facts regarding the history of J.D. and W.D. including why the foster home of [REDACTED] had been closed, as well as behavior and behavior predictors of the children as required by Florida Statutes and the Florida Administrative Code, including, but not limited to: §§ 63.039, 63.085, and 63.125, Florida Statutes, and Rules 65C-15.028, 65C-15.029, 65C-15.031, 65C-16.002, 65C-16.009, 65C-16.013, Florida Administrative Code.

54. FSSNF knew of said misrepresentations and/or concealments and/or should have known of said misrepresentations and/or concealments.

55. In making misrepresentations and/or concealing information regarding the suitability of J.D. and W.D. for adoption, FSSNF knew or should have known that the adoptive parents, A.D. and S.T., would rely on said misrepresentations and the lack of complete information in making their decision to adopt J.D. and W.D.

56. Accordingly, because of FSSNF's negligent misrepresentations and negligent failure to provide complete disclosures regarding J.D. and W.D., the adoptive parents relied on said information and adopted the children in August 2009.

57. In addition, A.D. and S.T., have sustained damages, including but not limited loss of capacity for the enjoyment of life, expenses of the children's therapeutic and psychiatric treatment, expenses of specialized one-on-one care in school, expenses of a specially trained nanny rather than daycare, aggravation of previously existing condition of J.D. and W.D., and unnecessary, inappropriate delays in treating pre-existing conditions of J.D. and W.D., thereby compounding the situation in depriving A.D. and S.T. of what otherwise would have been a more normal existence. Losses are permanent and continuing and the Plaintiffs will continue to suffer the losses in the future.

WHEREFORE, Plaintiffs demand judgment for damages against the Defendant, FAMILY SUPPORT SERVICES OF NORTH FLORIDA, for compensatory damages, costs and all other such relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of all issues so triable in this case.

**ZISSER, ROBISON , BROWN,
NOWLIS, MACIEJEWSKI, &
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